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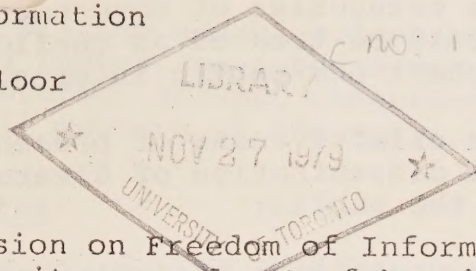
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Ontario

NEWSLETTER

January, 1978

Government
Publications

Commission on Freedom of Information
and Individual Privacy
180 Dundas St. West 22nd Floor
Toronto, Ontario M5G 1Z8



The Ontario Commission on Freedom of Information and Individual Privacy is holding its second set of hearings commencing February 20th, 1978, first in Toronto, and then later in Northern and other parts of Ontario. The hearings in Toronto will take place in the Hearing Rooms on the 21st Floor of the Professional Tower, 180 Dundas Street West (Commission Offices).

The Commission completed its first set of hearings in late November, 1977. Since then, much time and effort has been spent to encourage public involvement from all interested parties in the Province. During this period equal time and effort, of course, has been spent on research studies.

During the future Commission hearings many authorities on the subjects will be presenting briefs, and attached is a partial list of those who will be appearing before the Commission.

This Commission Newsletter is simply designed to offer an overview of the Commission's principal activities to date. Its purpose is to increase the awareness and understanding of the public regarding the Commission's mandate, and also to emphasize the importance of the issues involved; issues which directly or indirectly might affect the rights of all citizens in the Province of Ontario.

THE MANDATE

The Commission was established March 30th, 1977, by the Government of Ontario, to examine the problems of adapting freedom of information legislation to a parliamentary system in Ontario. Not only is the issue of greater access to information being studied, but as well the legitimate concern that exists in the Province respecting the possible misuse of the abundance of personal data Government has become privy to in recent years.

The following are the terms of reference of the Commission:

1. Public information practices of other jurisdictions in order to consider possible changes which are compatible with the parliamentary traditions of the Government of Ontario and complementary to the mechanisms that presently exist for the protection of the rights of individuals;
2. The individual's right of access and appeal in relation to the use of Government information;

3. The categories of Government information which should be treated as confidential in order to protect the public interest;
4. The effectiveness of present procedures for the dissemination of Government information to the public;
5. The protection of individual privacy and the right of recourse in regard to the use of Government records.

PUBLIC INFORMATION HEARINGS

From October 12th, intermittently through to November 23rd, 1977, the Commission heard submissions from over 50 organizations and individuals in Toronto, Hamilton, London, Kitchener, Windsor, Ottawa and Kingston.

Hearings were conducted in an informal manner in an effort to ensure that all individuals and organizations would speak freely and openly with the Commissioners. At all hearings of the Commission, citizens attending are invited at the conclusion of each session, to offer any further views they may wish to present, to the Commission.

Some of the key issues with which the public appeared to be most concerned, as they came before the Commission, were the following:

- the degree of protection of computer systems which hold confidential, personal records of individuals;
- in the area of medical research which has increased personal confidentiality of records, the misuse of which could interfere with medical research which depends on family research, such as cancer, etc.;
- the access of the public to minutes of municipal council and school board meetings;
- the concern of individuals of the accessibility to confidential records which contain information about themselves;
- greater access to government information, for example, what factual information is used to formulate policy.

Public Participation and Communication

The Commission has written and/or personally communicated with individuals requesting submissions--these include: business, public interest groups, concerned individuals, politicians and all members of the media.

Interviews and the Public Forum

It is the policy of the Chairman of the Commission, Dr. D. C. Williams, to meet all requests to speak about the work of the Commission. Dr. Williams and other members of the Commission have appeared on radio, television and panel discussions.

It is the intention of the Commission to continue this policy.

The Commission also keeps an open library in which all briefs received, once they have been publicly presented, are available within its offices to any member of the public. In addition, publications received from all over the world are indexed and immediately made available to the public.

Government of Ontario

The Commission has extended an invitation to the Deputy Ministers of the Ontario Government, asking them if they would like to appear individually before the Commissioners, during the February hearings.

It is the Chairman's belief that the nature of the Commission's work which includes within its terms of reference the requirement to "... consider possible changes which are compatible with the parliamentary traditions of the Government of Ontario and complementary to the mechanisms that presently exist for the protection of the rights of individuals"; and also the Commission's requirement to investigate "the protection of individual privacy and the right of recourse in regard to the use of Government records" defines the importance of the Commission hearing directly from those responsible for the administration of Government.

Research Project

The Commission's research staff is at present engaged in a comprehensive research program. Although studies have been carried out on the effectiveness of the Ontario Government's communication system, the Commission investigation into what kinds of information should be available to the public, that is now available, and how it should be implemented and administered is unique.

The first phase of the research programme, consisting of basic bibliographical, legal and related research, is nearing completion.

1. A complete bibliography of some 1,500 publications has been researched and tabulated and is available for use in the Commission's office. These 1,500 publications represent a storehouse of knowledge, from Commonwealth, European and American sources, of all aspects of freedom of information and individual privacy.
2. A further research project which has also now been completed is an examination of all Ontario statutes. This research has revealed that there are 122 provincial statutory provisions which tend to prevent the dissemination of information.

In the very near future, the second phase of the research programme will be launched. This phase of the programme will consist of a detailed examination of current information practices in a sampling of government ministries and agencies and an exploration of the opportunities for increased access to government information and of the potential difficulties inherent in such access.

Responsibility of the Commission

The Commission is well aware of its responsibility to the Ontario public, whose tax dollars make the project possible. Indeed, although the Commission is continually striving to achieve greater participation and interest among the Ontario public, in an effort to stress the importance and timeliness of freedom of information in Ontario, it is doing so at the least possible cost to the taxpayer.

Only with the interest and continued participation of the press and broadcasters can we effectively communicate with the public. As all branches of the media have a direct interest in the subject of freedom of information, this Commission hopes to receive continued help with their studies. This Commission, therefore, appreciates and welcomes constant interest and participation from the media and public.

Future Newsletters

In order to keep the public informed of the progress of the Commission, a news report outlining what the Commission is doing will be issued periodically.

The Commission

The Commission has a total staff of twelve, including the three Commissioners, researchers, administrative and legal counsel.

The Chairman


Dr. Williams became President of the University of Western Ontario in 1967, following a distinguished career as an academic and university administrator.

He also served as Chairman of the Committee of University Presidents--and was a pioneer in the use of television as an educational aid. He is the author of "The Arts as Communication", and report, "University Television".

Commissioners

Mrs. Dorothy Burgoyne is from St. Catharines, Ontario. She is a member of the board of governors of Shaver Hospital for Chest Disease, the Niagara Parks Commission, and the Shaw Festival board of directors.

Mr. G.H.U. Bayly is from Heathcote, Ontario. He joined the Department of Lands and Forest in 1945, and became Deputy Minister of the Department in 1966. He served as Secretary of the Treasury Board of Cabinet in 1971, and became Deputy Provincial Secretary for Resources Development in 1974.



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NEWSLETTER

April, 1978

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Commission on Freedom of Information
and Individual Privacy
180 Dundas Street West, 22nd Floor
Toronto, Ontario. M5G 1Z8

"The only real protection against subversion and tyranny is
a well-informed public, vigilant of its own rights."

- James Huggessen, Associate Chief Justice,
Quebec Superior Court

Since the Commission on Freedom of Information and Individual Privacy
published its last Newsletter in January 1978, a second set of hearings
has taken place in Toronto and a comprehensive array of research projects
has been fully launched.

The Commissioners will be holding further hearings in Northern
Ontario in the middle of May. A final set of public hearings are being
scheduled for September of this year.

PUBLIC INFORMATION HEARINGS

From February 20 through to March 15, the Commission heard submissions from
interested citizens and Deputy Ministers of the Ontario Government. The
Deputies had been, in a rather unique step, especially invited to appear
before the Commissioners to state their thoughts as to how they believed
freedom of information could be best implemented and administered in
Ontario.

Following are selected highlights taken from the submissions of the Deputy
Ministers. Time and space does not permit excerpts from them all, but
attached to the Newsletter is a list of everyone who appeared at the
Commission's February/March hearings.

Highlights selected from the submission by the
Deputy Attorney General, Mr. H. A. Leal

With Mr. Leal at the public hearing were Mr. R. S. Chester,
Executive Counsel, and J. Cavarzon, Senior Crown Counsel.

Mr. Leal believes the Government of Ontario has in recent years been moving
to make "more information available to the public through a variety of devices".

The important points of the Deputy Attorney General's speech were the
following:

- 1) "Statutes which contain specific restrictions on disclosure (of
information) have developed in an ad hoc manner and do not reflect
consistent and coherent policy."

- 2) "The concept of a right of individual privacy remains essentially unrecognized at law in Ontario. Privacy protective measures do exist in a number of Ontario Statutes. These provisions too have been introduced on an ad hoc basis and reflect a policy vacuum."
- 3) In his submission, Mr. Leal stated that a "Government Information Practices Act" declaring the intention of the Legislature to foster freedom of information and protection of privacy should be enacted. Mr. Leal suggested the act should provide for the appointment of an "Information Practices Commission" which would be an independent specialized body, perhaps reporting directly to the Legislative Assembly.
- 4) Mr. Leal stated that he believes most formal freedom of information schemes have erred on the side of too many exemptions, but that in his view this is an intelligent way to proceed, because the legislation can be amended after the fact.

Highlights selected from the submission by
Consumer & Commercial Relations Deputy Minister, Mr. R. J. Butler

With Mr. Butler at the public hearing were Mr. E. Ciemiega, Q.C., Director of Legal Services; Mr. N. Vetere, Deputy Registrar General; and Mr. C. R. V. Salter, Q.C., Director

The Ministry of Consumer & Commercial Relations, due to the diversity and number of its programs, which affect consumers and businesses, has access to substantial amounts of information about the residents and corporations of Ontario. The Ministry's position is to be helpful to the public as much as possible, without infringing unduly on the right to privacy. The Ministry has some main concerns. Essentially they are:

- 1) That absolute disclosure of all information possessed by the Ministry of Consumer & Commercial Relations would not be in the public interest. Competitive forces in the province rely heavily on the Ministry to maintain in confidence various plans, procedures and practices until they are perfected and publicly launched. The Ministry would be placed in a breach of faith position if it were required to disclose everything. Because the individuals or the business firms applying for a licence, etc., are required to provide full details for the assessment of the right to registration or a licence, they should be assured that data disclosed will not be made public. Without such assurance, information which is now readily supplied would be withheld. The Ministry believes this would not be in the public interest.
- 2) Another major concern of the Ministry in its attempts to keep a balance between that which should be public information and that which should remain private has been the development and enactment of the Consumer Reporting Act. The purpose of the Act is to protect the consumer from inaccurate, outdated or indiscriminately-used information about his personal lifestyle or credit standing. An attempt was made with this Act to achieve some balance between the business community's right to know and the consumer's right of privacy.

Highlights selected from the submission by
Transportation & Communications Deputy Minister, Mr. H. F. Gilbert

The Ministry believes information it holds is a valuable public resource and also believes that it is very much in the public interest that such information be available and be used as widely as possible.

The Ministry of Transportation & Communications has one of the largest and most extensive government collections of information on private citizens; for example, the driver and vehicle files. In the Ministry's experience, the most demanding requests for information are those [for] which [materials] are not assembled and therefore, not readily available or possibly even conceived. The Ministry finds it extremely difficult and costly to deal with such requests.

The Ministry's practice has been to try and satisfy all such requests. "But to do so often conflicts with the priority of other government business at the time. And the lack of government policies or legislation on such matters leaves it to the discretion of staff to determine how fast the response should be, and the level of detail and effort."

The Deputy believes a freedom of information act should attempt to prevent abuse by prescribing the types of documentation that must be prepared and made public. The Deputy suggested one way of meeting requests would be to categorize the applicants. "By establishing the interest or status of these applicants, or class of applicant, it should be possible to balance the interests involved and reduce requests of a frivolous or vexatious kind.

"By such means, access to the vehicle file by commercial or criminal interests could be stopped. It is a matter of considerable concern to the Ministry, for example, that we could, unknowingly, aid theft rings by giving out vehicle data to the public for a \$3.00 fee. While further recognizing that screening applicants would be difficult and even disagreeable to implement, I believe it should be seriously considered."

The Ministry of Transportation & Communications makes every effort to inform the public. "We instruct information officers to be open and provide as much information as possible. We were the first Ministry to get into a public participation program. In the best traditions of the public service, we are far more anxious to be part of the solution, than part of the problem."

Highlights selected from the submission by
Culture & Recreation Deputy Minister, Mr. R. D. Johnston

With Mr. Johnston at the public hearing were Mr. D. F. McQuat, Archivist; Mr. L. Applebaum, Executive Director, Ontario Arts Council; and Mr. T. R. Ide, Chairman, Ontario Education Communications Authority.

Mr. Johnston stated that his Ministry funds programs for public libraries across the province, which is a form of information service. The Ministry is therefore sensitive to the growing need of people to obtain information which they need in dealing with the complexities of society today.

The other part of the Ministry's information dissemination organization is to support the Community Information Centres across the province and the Citizens Inquiry Branch which also produces a book called "The KWIK Index" which is a form of computerized information source on all functions and activities of the government, which is organized in a catalogue fashion. These Indexes are a major tool for Information Centres because the government prefers to have people in Windsor, or wherever it is, who want to know who they should deal with in the Ontario Government, on a certain issue, get that information locally rather than all having to contact a central source at Queen's Park.

One of the Commissioners asked Mr. Johnston a question related to how the Ministry disseminates information regarding services such as welfare, and how people needing such services find out about how they can obtain these services. Mr. Johnston answered that there are some difficulties. He suggested the Information Centres probably would say they need more money so that they could publicize their activities more effectively in some cases, and in no doubt a number of languages, and it would be necessary to do that. "I think its just a matter of resources, more than anything, to improve the knowledge of the services available."

Highlights selected from the submission by
Agriculture & Food Deputy Minister, Mr. R. G. Bennett

With Mr. Bennett at the public hearing was Mr. F. F. Gallant, Q.C., Director of the Ministry's Legal Branch.

Mr. Bennett stated that the Ministry of Agriculture's key concern was the individual's right to privacy and also that the Ministry has the view that a "Code of Disclosure" should be established for the guidance of government staff. The Deputy does not want any further freeing up of inter or intra ministerial memoranda relating to policy development within the Ministry, because it is not policy at that time, and if it is made public can be construed as policy and could be embarrassing to the Minister who is responsible, as it more or less dictates the position he has to take.

Mr. Bennett also outlined his feelings that the machinery within government is quite clear vis a vis the provincial law and its responsibility to keep the privacy of financial reports, licences, etc., and that "when you're dealing with information of this type it should be kept private. It might deal with something in relation to the Provincial Auditor's status or you might be dealing with the budgetary process in government. Its very clear that anything dealing with budget formulation and so on is not published until the Treasurer presents his budget."

Essentially the Ministry of Agriculture is in favour of sharing all the information it possibly can. The Ministry believes it would be helpful if the Commission could delineate those areas in which confidence should be kept. The Deputy Minister, understanding the difficulty of the task, would like to see guidelines delineated more than they are at the present time.

The Ministry would like to see a "Code of Disclosure" established for the guidance of government staff, so that civil servants feel that in effect they are not acting contrary to government policies when they disclose certain kinds of information. They will have already referred to the "Code" to give them guidance.

Highlights selected from the submission by the
Deputy Provincial Secretary for Social Development, Dr. D.T. Wright

"...consideration should perhaps be given to allowing the release of factual and analytical data developed to support the Cabinet decision-making process. In effect, this data could include almost all parts of submissions to Cabinet as they are currently formulated, only the conclusions and recommendations being omitted."

Highlights selected from the submission by the
Deputy Minister of Education, Mr. G.H. Waldrum

The Ministry is very supportive of freedom of information. One major concern the Ministry has; "about legislating freedom of information, is the possible effect this will have on resources. If it is anticipated that a change in policy will result in a substantial escalation of information requests, such a policy should clearly define the user's responsibility and expectations."

Highlights selected from the submission by the
Deputy Minister of Housing, Mr. D.A. Crosbie

The Ministry of Housing operates from the following premise: "the communications/information function is fundamental to the effective operation of the Ministry; in recognition of this, the person(s) held responsible for Ministry communications function will be a member of senior management and privy to all policy and program considerations. The basic communications/information 'stand' of the Ministry will be 'open' as compared to 'closed or restrictive'."

Highlights selected from the submission by the
Deputy Minister of Correctional Services, Mr. G.R. Thompson

With Mr. Thompson at the public hearing were Dr. H.C. Hutchison, Executive Director, Interim Assignments; Mr. C.F. Dombek, Director, Legal Services; Mr. A. Daniels, Director, Personnel Branch; and Mr. J.F. Benedict, Manager, Compensation and Staff Relations.

"Most information which is available to the public or media in other forums, i.e. courts, etc., is made available. Any information which may adversely affect the inmate or the security of the institution is not released. Again, this is a 'judgment call' and discretion must remain with the Ministry."

Highlights selected from the submission by the
Deputy Minister of Labour, Mr. T.E. Armstrong

"The first concern of the Ministry is that the citizens of Ontario be made aware of their rights and obligations. Dissemination of information about the rights and obligations created by the legislation administered under the aegis of this Ministry, and the mechanisms for their enforcement, is one of the important activities of the Information Branch."

Highlights selected from the submission by the
Deputy to the Premier's Office & Secretary to the Cabinet, Dr. E.E. Stewart

With Dr. Stewart at the public hearing were Mrs. Fern Harding, Director of Records Management; Ms. J. Gordon, Cabinet Committee on Justice; Mrs. M.L. Gaby, Cabinet Committee on Social Development; and Mr. D. Y. Lewis, Deputy Secretary of Cabinet.

Dr. Stewart told the Commission that the public's right to know about government affairs would be helped more by common sense guidelines than tough/American style "sunshine" laws. Dr. Stewart also believes there is a need for general guidelines for the proper dissemination of information.

The Deputy Premier also said there are many areas of government where information should be kept secret and confidential and unavailable, for instance, OHIP records and criminal records from the Attorney-General's office.

Highlights selected from the submission by the
Deputy Provincial Secretary for Resources Development, Mr. R.M. Dillon

Mr. Dillon believes that there is relatively little information about the business of government, at the provincial level, which should be withheld from the public. There are exceptions, he believes, such as information regarding personal matters and statistics and information which involves a question of individual privacy. It may also be necessary, he stated, and not unreasonable to withhold information dealing with matters under consideration by Cabinet. "However, once a decision has been made, in most cases the public has a right to know. The public's perception of government would improve with freer release of information."

Mr. Dillon continued by making the important point that, if research is being conducted in a particular area, it should be freely admitted. "Too often I think there is reluctance to reveal that investigative work is underway dealing with controversial topics, for example, mercury contamination."

Mr. Dillon sees a trend toward more open government, partly stimulated by the minority government situation. He sees the Select Committee on Hydro, the Royal Commission on Electric Power Planning, the Hart Commission on Northern Environment, as all being evidence of more open government which he believes is meeting effectively the public's demand for information.

Highlights selected from the submission by the
Deputy Minister of Northern Affairs, Mr. T. Campbell

With Mr. Campbell at the public hearing were Mr. F. Whitehead, Northern Affairs Officer, Fort Frances, and Mr. G. Garant, Supervisor, Information Resources, Information Services Branch.

"To people in the North, the questions about what information they should have access to and what they shouldn't is rather academic. Because their main concern is getting access to information that is already available, the physical isolation of the North sometimes makes it difficult to do.

"One of our functions is to increase accessibility of the government to the people of the North; services, activities, programs."

THE RESEARCH PROGRAM

The research program has been sub-divided into three "phases" which may be briefly characterized as follows:

- Phase I - the preparation of basic research tools, an extensive bibliography, a description of Ontario law on relevant topics, a brief overview of experience elsewhere, etc.
- Phase II - the conduct of research projects which will have the cumulative effect of describing information practices at all levels of provincial government and of proposing alternative solutions to problems of access and privacy protection.
- Phase III - the provision of detailed proposals and other support for the decision-making exercise of the Commission.

The Role of the Research Program

The research staff will attempt to assist the Commission in its task of fashioning workable proposals to resolve such problems as are perceived with information access and privacy protection with respect to government information in Ontario through provision of the following:

- 1) An account of current law and practice with respect to information access and privacy protection in Ontario;
- 2) An account of recent experience and proposals for reform in other jurisdictions;
- 3) An account of the thinking of those engaged in academic disciplines relevant to the work of the Commission;
- 4) An assessment of various proposals for increasing access to government information and protecting privacy interests in the light of an understanding of the realities of administrative practices in Ontario; and
- 5) The development of administrative and/or legislative frameworks for implementing information access and privacy protection policies as the Commission may determine to be appropriate.

Research Projects

The following research projects have been initiated or are in the process of being initiated:

1. Information Access/Governmental Policy-Making
Principal Purpose: to study and report on opportunities for increasing access to information about the policy-making activities of the Ontario Government.

2. Information Access/Government Operations
Principal Purpose: to study and report on opportunities for increasing access to information about the operations of the Ontario Government.
3. Information Dissemination Practices Project
Principal Purpose: to study current government information dissemination procedures.
4. Ontario Law Project
Principal Purpose: to study and report on ways and means to improve relevant Ontario legislation relating to information access.
5. Project on Commercial Information
Principal Purpose: to study and report on the effect of access legislation on commercial information obtained by the Ontario Government.
6. Administrative Boards and Agencies
Principal Purpose: to examine the current practice in administrative boards and agencies with respect to information access and to report on the opportunities for increased information access and on the need for confidentiality of the various participants in the administrative process.
7. Personal Records and Privacy Project
Principal Purpose: to study and report on the extent of, and need for, the protection of individual privacy in personal records maintained by the Government of Ontario and to assess the opportunities for citizen access to personal records.

OPEN LIBRARY

The Commission keeps an open library. As mentioned in the last Newsletter, all briefs, once they have been publicly presented, are available within the Commission offices to any member of the public.

FURTHER PUBLIC HEARINGS

The Commission is accepting briefs for the fall hearings. All interested individuals or groups are invited to participate.

For further information regarding submissions or scheduling, please contact Miss Doris Wagg, Registrar, at 598-0411.

COMMISSION IN THE NEWS

The Toronto Sun, Friday, January 20, 1973

Psst! Why so secret?

Did you know that the Pregnant Mare's Urine Farm Act has a secrecy provision?

Well it does.

Not that you'd likely care to know much about it, but it does illustrate one of the problems facing the commission on freedom of information and individual privacy.

It's one of 122 provincial statutes which, either by statute or regulation, contain secrecy provisions.

What protection?

However, Williams said one computer expert, worried about the power of computer information, presented the commission with a print-out of 600 John Smiths who have chattel mortgages on their cars.

"Now it's useful to have the information about the one John Smith in question," Williams said, "but it's at the price of infringing on the freedom of the other 599 John Smiths."

Does Williams have a solution to all this? "No," he said, "I don't know of any, but I'm open to suggestions."

Of the 500 statutes on the Consolidated Statutes of Ontario, 102 have specific provisions keeping all or part of the information secret.

Another 20 contain major regulations which also serve to block public access to government information.

Williams said some of the secrecy provisions, such as those contained in the Venereal Disease Act, make sense, but "just why the pregnant mare's urine act should be secret, I'm not sure."

His job, which he expects to finish about a year from now, is to find out what is secret, why, and propose draft legislation to give the public more access to government information.

Computers a worry

Late last year, during its first round of hearings, the commission heard submissions and received briefs from over 50 organizations.

Williams said by far the major public concern was the degree of protection people have from computers filled with confidential, personal records.

"More and more, the computer erodes any hope we have of maintaining individual privacy," he said. A pretty scary observation don't you think?

He said personal information has always been available, but was contained in scattered files, buried in drawers, and took a real effort to bring together.

"Now all you've got to do is push a button," he said.

It really is frightening, particularly since there doesn't appear to be a ready solution to the problems which could arise by the unscrupulous use of personal data.

Excerpts from Clair Hoy's column

Strong freedom of information laws proposed

KINGSTON, Ont. (CP) — Legislation making all provincial government documents available to the public unless specifically exempted was proposed Wednesday at a hearing of the Ontario commission on freedom of information and individual privacy.

Ken Rubin, an Ottawa community worker and researcher, said the exemptions under his suggested legislation should be narrowly defined.

In cases of disagreement, the courts should be the appeal tribunal with the provincial government required to show why the documents should be kept secret, he said.

Rubin said he has many examples of instances where the Ontario government or its agencies refused to release to him information he felt was clearly in the public interest.

"We need at all levels of government strong freedom of information laws," he told the commission.

Timothy Whitehead, a graduate economics student at Queens University, said the secretive nature of government is a major cause of an increasing lack of faith by the public in governments.

Whitehead said the lack of faith leads to a loss of respect for the rule of law and an increase in public apathy.

Michael L. Davies, publisher of The Whig-Standard, said he supports a submission by the Canadian Daily Newspapers Publishers' Association calling for freedom of information legislation similar to that proposed by Rubin.

He said governments have collected and stored more information about citizens than ever before in history.

COMMISSION IN THE NEWS

THE TORONTO STAR
Wed., Mar. 1, 1978 A 29

Ontario information access act urged

A freedom of information act should be drafted in Ontario, the deputy attorney-general said yesterday.

Allan Leal told the commission on freedom of information and individual privacy an independent commission should be established to administer a "government information practices act."

The commission, he said, would determine whether specific information would be made public.

But Leal suggested that Ontario should reject the approach of U. S. legislation as being "incompatible with our system of parliamentary democracy."

500 ACTIONS

In a written submission, Leal said the U. S. act has spawned approximately 500 actions in the federal courts.

"The Ontario court system can do without such further increases to its caseload," he said.

Under the U. S. act, citizens have access to all government information, except in a limited number of specified areas.

In an interview, Leal told The Star "the desire to know is not necessarily coincident with the need to know."

He said that as "a broad, general rule any Canadian should have the right to see files gathered by any government agency."

NDP BRIEF

The commission also received a brief yesterday prepared by MPPs Donald MacDonald and Patrick Lawlor for Ontario's New Democratic Party caucus.

The NDP brief argued that "all government information should be readily available to the public, as a right, except that which falls into exempted categories, defined as precisely and narrowly as possible."

Secrecy chairman wants to be let in on secret

Dr. Carlton Williams, who is inquiring into Government secrecy at the request of the Ontario Government, wants to be let in on a secret.

Why, he wondered at a press conference yesterday, is the Pregnant Mare Urine Farms Act included among 122 provincial laws and regulations which contain secrecy provisions?

Dr. Williams told reporters that he applauds the requirement of confidentiality in the Venereal Diseases Act, but he said it was beyond him why the Government has included a secrecy provision in the act respecting pregnant mares.

The excavation of 102 statutes and 20 regulations which tend to prevent the dissemination of information has been a major research project of the Commission on Freedom of Information and Individual Privacy. Dr. Williams was president of the University of Western Ontario before being appointed chairman of the commission in March, 1977.

"What we've done so far is to dig these out, and it's been no mean task, I assure you," he

said. Now commission researchers are examining the acts and regulations to find out if this secrecy is really needed.

(To answer Dr. Williams's question, the act stipulates that hearings conducted by the Pregnant Mare Urine Licence Review Board shall be open to the public except where the board finds that public security may be involved or where intimate financial or personal circumstances of any person may be disclosed. However, these exceptions may be ignored if the board also decides it is in the public interest to do so.)

When the Government decided to appoint the commission rather than passing its own freedom of information legislation, some opposition members termed the action a cop-out.

Dr. Williams said he cannot estimate the final bill, but expects that the commission will finish its task by spring or summer of 1979.

He added that computer stores of confidential information about people have generated the greatest amount of apprehension of any issue.

The Globe & Mail, January 20, 1978

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Government
Publications

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NEWSLETTER NO. 3

August, 1978

THE WORK OF THE COMMISSION

The Commission on Freedom of Information and Individual Privacy was established on March 30, 1977 by an Order-in-Council, "... to study and report to the Attorney General of Ontario on ways and means to improve the public information policies and relevant legislation and procedures of the Government of Ontario ..."

Since the fall of 1977, public hearings have been held in Toronto, Hamilton, London, Kitchener, Windsor, Ottawa, Kingston and Timmins. A further set of public hearings will take place in Toronto during the week commencing September 11, 1978. For details, see page 3.

The Commission has published two previous Newsletters, in January and April of 1978, to provide an overview of the Commission's principal activities. These may be obtained by contacting the Commission's offices.

In addition to carrying out preliminary research, the Commission has maintained an open library to which the public may have access during working hours. Briefs presented at the public hearings are also available for public examination.

The Commission has published a Preliminary Bibliography, supplies of which have been exhausted. However, copies are available for viewing in the Commission's library. A Final Bibliography will become available in late fall.

THE RESEARCH PROGRAM

As summer draws to a close, so too does the second phase of the Commission's research program. Since April, the Commission has increased its research staff to accommodate more fully the intensity and volume of research necessary to arrive at a thorough understanding of the issues involved in freedom of information and individual privacy. For details, see pages 5-13.

THE COMMISSION AND NORTHERN ONTARIO

In May, 1978, the Commissioners visited Northern Ontario to meet with Northern Affairs personnel, local MPP's, various government officials and the general public to learn first-hand about Northern Ontario practices and problems regarding the receiving and dissemination of government information.

The Chairman of the Commission, Dr. D. C. Williams, met with residents and government officials of the Kenora area to determine what difficulties were being experienced by citizens in obtaining information from the government, and to explain the functions of the Commission. Dr. Williams spent several fruitful days discussing the problems and possible solutions which could benefit the area residents and assist the Commission in fulfilling its mandate.

In addition, Commissioners Mr. G.H.U. Bayly and Mrs. D.J. Burgoyne attended meetings in Kapuskasing and Timmins with town representatives and members of locally represented ministries to learn what information is divulged to the public, how much of it and how readily. The Commissioners heard briefs presented at a Public Hearing in Timmins on May 9th. A brief from Grand Council Treaty No. 9 contained at least three instances where they felt access to government documents had been hampered. Comments were also heard from M. Laughren, President of the Timmins Chapter of the Canadian Civil Liberties Association.

The Chairman and Commissioners held press conferences in all three locations to focus attention on the purpose and work of the Commission and to encourage public awareness of the issues involved in freedom of information and individual privacy.

COMMENTS BY THE CHAIRMAN

The Chairman of the Commission, Dr. D.C. Williams, visited London, Stockholm and Oslo in June. He was interested to find that the work of the Commission was well known to government and other officials in both England and Scandinavia.

The widespread expert interest in freedom of information and individual privacy was evident in the friendly willingness of all concerned to provide maximum information and assistance. Dr. Williams reported that the British appear to be reluctant to introduce specific freedom of information legislation and seem to be more concerned with protection of privacy. This matter was recently debated at length in both Houses of Parliament and the British Government has promised a White Paper on the subject in the very near future. (The Hansard Reports of the above-mentioned debates are now available in the Commission's library). Dr. Williams was interested to learn from discussions with various members of the press that the British Press Council maintains a Freedom of Information Committee whose concerns embrace both national and international problems.

By contrast, freedom of information in Sweden is so well established as to have become traditional, while privacy is a much more recent concern. Oslo University in Norway appears to be the only university in the western world which has an institute for research on privacy. Since its concerns are both national and international, a cordial working relationship with this Commission has been established by Dr. Williams.



NOTICE OF PUBLIC HEARINGS

THE COMMISSION ON FREEDOM
OF INFORMATION AND INDIVIDUAL
PRIVACY announces that Public Hearings
and presentation of briefs from interested
citizens and groups will commence on
Monday, September 11, 1978 at
2:00 o'clock in the afternoon in the
Hearing Room on the 21st floor
at 180 Dundas Street West, Toronto.

DATED at Toronto this 17th day of
August, 1978.

D. C. Williams, Ph.D., LL.D.
Chairman

W. R. Poole, Q.C.
Counsel

Since its second set of public hearings held in Toronto in February/March of this year, and the further hearings held in Northern Ontario in May, the Commission has been accepting briefs for the fall 1978 hearings from interested individuals and organizations. The above Notice was placed in the three Toronto daily newspapers to encourage public involvement from all interested parties. Notice of submissions are still being received.

For further information regarding submissions or scheduling, please contact Miss D.E. Wagg, Registrar, at 598-0411.

A final hearing schedule will be available in early September. However, presentations have been confirmed thus far for the fall hearings by various individuals and groups, and these are listed on page 4.

PARTIAL LIST OF
BRIEFS TO BE HEARD AT FALL HEARINGS

Mr. Alan Borovoy, General Counsel
CANADIAN CIVIL LIBERTIES ASSOCIATION

Ms. Adele Hurly
POLLUTION PROBE

Mr. Paul Williams, Director
Rights and Treaty Research Program
UNION OF ONTARIO INDIANS

Mr. John Rae
BOOST (Blind Organization of Ontario
with Self-Help Tactics)

Mr. James G. Carnegie, General Manager
ONTARIO CHAMBER OF COMMERCE

Mr. J. Luxton, President
ASSOCIATED CREDIT BUREAUS OF CANADA

Dr. John Crispo
Faculty of Management Studies
University of Toronto

Prof. Patrick Fitzgerald, Chairman
Senate Committee
Carleton University, Ottawa

Mr. Don Johnston, Chairman
Freedom of Information Committee
RADIO-TV NEWS DIRECTORS ASSOCIATION
OF CANADA

Ms. Elizabeth Block
Mr. Jeffrey Lyons
SUNSHINE (Association for the
Right to Inform)

Ms. Karen Smith, President
ONTARIO LIBRARY ASSOCIATION
Committee on Government Information

Mr. R.J. Whynott, Executive Director
THE HAMILTON AND DISTRICT CHAMBER
OF COMMERCE

Ms. Jean Base
ONTARIO HEALTH RECORDS ASSOCIATION

Mr. M. David Lepofsky, Student
Osgoode Hall Law School

Ms. Gail Walmsley
Ms. Margaret McFayden
Information Service Committee
DORLS (Directors of Ontario Regional
Library Systems)

Mr. R.D. Carman, Deputy Minister
MINISTRY OF COMMUNITY & SOCIAL SERVICES
Mr. Glen Heagle, Executive Coordinator
Policy Analysis and Financial Planning
Mr. Michael Ozerkevich, Senior Advisor
of Child Care Standards

John D. Armstrong, M.D.

THE RESEARCH PROGRAM (cont'd from page 1)

Research is being carried out under the direction of John D. McCamus, former Associate Dean of Osgoode Hall Law School of York University. Professor McCamus has taken a leave of absence from Osgoode in order to supervise the Commission's research program.

The program in part consists of eight research projects conducted by the Commission's research staff. The projects, listed below, are described more fully on pages 6-13.

1. Policy-Making Project
2. Government Operations Project
3. Information Dissemination Project
4. Ontario Law Project
5. Commercial Information Project
6. Administrative Boards and Agencies Project
7. Personal Records/Privacy Project
8. Municipal Government Project

In addition, a number of studies and working papers have been undertaken for the Commission by independent researchers. These include:

Bibliography on Freedom of Information and Individual Privacy
Jane Patterson, Laurel Murdoch, with the assistance of Judith Smith

The Freedom of Information Issue: A Political Analysis
Prof. Donald V. Smiley, Dept. of Political Science, York University

Information Access and the Workmen's Compensation Board
Prof. Terence G. Ison, Faculty of Law, Queen's University

Research and Statistical Uses of Ontario Government Personal Data
Prof. David H. Flaherty, Faculty of Social Science, University of Western Ontario

Information Access and Crown Corporations
Prof. I. A. Litvak, Faculty of Administrative Studies, York University

Public Access to Government Documents: A Comparative Perspective
Prof. Donald C. Rowat, Dept. of Political Science, Carleton University

Freedom of Information and Ministerial Responsibility
Prof. Kenneth D. Kernaghan, School of Administrative Studies, Brock University

Securities Regulation and Freedom of Information
Prof. M. Q. Connelly, Osgoode Hall Law School, York University

Information Access and Agency Rule-Making Procedures
Prof. David J. Mullan, Faculty of Law, Queen's University

RESEARCH PROJECTS

Policy-Making Project

Principal Investigator: John Eichmanis
Researcher: Michael Sabia
Assisted by: Jane Campbell

The Policy-Making Project group was faced with the task of assessing the degree to which information generated in the governmental policy-making process can be made public. Public access to information in this area of government activity raises fundamental questions about the nature of government decision-making. For example, the question of ministerial responsibility; the question of whether decisions in effect are made by public servants or by politicians; questions about the roles played by the legislature and various interest groups.

The Policy-Making Project group has reviewed the concept of freedom of information in terms of its implications towards enhanced citizen participation in the policy-making process. This in turn suggests the question of whether the government should not only supply information to the public, but should also respond effectively to citizen reactions to that information.

The research group has undertaken a comparative analysis of measures taken or proposed in Sweden, the United States and Australia to open up the policy-making process. Comparisons with these other jurisdictions indicate that any freedom of information act as it applies to the policy-making process must avoid the peril of forcing officials to operate in a "gold-fish bowl". However, it is also clear that every attempt has been made in these other jurisdictions to make the process as open as possible.

In applying the lessons learned from these other jurisdictions to the situation in the Ontario government, the researchers have attempted to discern whether a balanced approach can be struck which both satisfies the public's need to know and preserves a requisite degree of confidentiality for the policy-making process. The research group has described and analyzed the current policy-making processes of the Ontario government. This analysis attempts to determine the extent to which the release of certain categories of information (e.g. consultants' reports, opinion polls, internal reports, final recommendations of various advisory boards) would impede or harm the policy-making process. Though the freeing up of this kind of information would do much to enrich citizen participation by more fully informing them about the activities of their government, it is evident that this value must be weighed against whatever inefficiencies in the process will be created by public disclosure. The report of this project attempts to assist the Commission in the difficult task of evaluating the impact of greater openness in this context.

Government Operations Project

Principal Investigator: Hugh R. Hanson

Researchers: Francine Latremouille, Susan Rowland

The Government Operations Project group was asked to look at the kinds of information and documents that the government collects and uses in the course of its day to day ongoing operations. It would, of course, have been impossible to look at all government operations and so examination of a carefully selected sample of programs was undertaken.

In all, the research group examined two dozen individual programs of the Ontario government that in total are thought to be representative of all the sorts of things the government does in administering programs. In each instance, the people responsible for administering the program were interviewed and the files and documents were examined in detail. Inquiries were made about the current policy determining public access to each kind of document and the reasons for that policy. These inquiries raised some interesting questions; for example, could members of the public see studies that consultants had been commissioned to prepare on the organization and effectiveness of individual branches of a particular ministry or ministries? It was learned that at present, the public has no way of knowing that such studies exist.

The final report of the Government Operations Project will identify a wide range of the types of material that the government has in its files and the types of considerations and policies that are used and in effect to determine whether or not the public should have access to this material. The report will also consider the implications of changing present access policy and examine the impact that might occur if, for example, inspectors' reports on nursing homes were to be released. One such implication is the possible effect that public release of these reports may have on the voluntary cooperation in raising standards that the branch currently receives from many operators of these homes.

It is expected that the information about the specific government files reported on by this research group will provide a wealth of concrete examples for the Commission in its deliberations on the most appropriate policies for access to information held by the Ontario Government.

Information Dissemination Project

Principal Investigator: Keith A. Martin

Assisted By: Jane Campbell

The purpose of this project was to examine the nature and structure of the present information delivery system within the government of Ontario.

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In order to present an overview of the present services, the research dealt with the administrative and policy aspects of the provision of government information, the provision of services for citizen inquiry and the provision for media inquiry.

The method of research for this project was to review the available studies on government information both at a federal and provincial level and to review the public briefs that have been presented to the Commission. In addition, interviews were conducted with user groups as well as ministry and agency personnel concerned with the delivery of information.

It is noteworthy that although the traditional constraints have continued to apply throughout the period from 1972 (when the Ontario Committee on Government Productivity Report was published) to the present, there has been a greater administrative commitment to the provision of information services. For example, during this period there has been the establishment of a centrally organized publishing program administered by the Printing Services Branch of the Ministry of Government Services.

The question of whether provision of information services has been maximized under the present structural, procedural and policy guidelines will be discussed in the final report of the Information Dissemination Project. The study will also address how freedom of information options might affect the present structure and operations of the current Ontario government information dissemination system.

Ontario Law Project

Principal Investigator: Timothy G. Brown
Researchers: Neil Boyd, Wayne Morris, Michael Riley
Assisted By: Susan Charendoff

The Ontario Law Project group's task was to assess the present legal situation in Ontario concerning the citizen's right of access to government information and, secondly, the protection of citizens from invasions of their privacy. Preliminary research had indicated that no cohesive body of law exists in Ontario dealing with access to government information. Further, the protection of individual privacy has never been the subject of direct law-making, either by the courts or by the legislature.

In the course of this project, the statutes of Ontario were thoroughly examined, and each statute was read in order to isolate all sections dealing with secrecy or public access. Of the approximately 500 statutes presently in force, one in every four contains some provision respecting non-disclosure of information. Broad secrecy language occurs in 29 of the province's statutes, ranging from the Ambulance Act to the Upholstered and Stuffed Articles Act.

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The research group found that there is no definition of privacy in Ontario law, although peripheral protections are scattered throughout the statutes and common law. Thus the individual citizen is afforded only an indirect protection from undue disclosure of private and confidential material. Although remedies do exist in some circumstances, then, in many cases they are so difficult to enforce as to render the individual essentially unprotected.

The researchers studied examples of the kinds of information which a public servant is prohibited or compelled to release under law to a member of the public or in court testimony. All public servants in Ontario take an oath of secrecy which is couched in language so broad as to render the oath, in the words of one eminent observer, a "legal absurdity".

Further, the provisions in Ontario statutes which provide for secrecy appear to be very broad and declare a great deal of government information to be secret. On the other hand, the smaller number of statutes granting the public a right of access to information are much more limited in their scope and make comparatively little information available to the public.

A further study undertaken by the research group concerned the concept of "Crown Privilege" under which a Cabinet Minister can refuse to provide information to the courts. In addition, studies were carried out of the Ombudsman's and Coroner's offices as information access mechanisms.

The research group examined information access legislation of other jurisdictions, especially the United States Freedom of Information Act, in order to assess the feasibility of importing similar statutory language into any legislation of this kind which might be considered by the Commission to be appropriate for Ontario.

Commercial Information Project

Principal Investigator: Susan Soloway

Researcher: Cliff Dresner

The purpose of the Commercial Information Project was to examine the potential impact of access legislation on the private sector in Ontario. Modern government, with its power to plan and regulate, tax and licence, amasses large quantities of business information. The provincial government routinely requests accounts from the private sector on a wide range of subjects including sales information, manufacturing costs, employment, technical designs and chemical effluent. Some information is filed pursuant to statutory requirements and some for the purpose of securing a benefit, while additional information is submitted on a voluntary basis.

The ground rules of business activity are in large measure premised on secrecy. To assure a competitive edge in the marketplace, companies vigilantly maintain a wall around many aspects of their business operations. To the extent that government through its regulatory, planning and other

functions has impinged on the ethic of secrecy, it has done so on the assurance of confidentiality. The research group has learned that at present, most business information in Ontario government files is treated confidentially.

The final report of the Commercial Information project will examine what is collected by the provincial government from the private sector. The researchers found, for example, that for statistical purposes, most information is collected from the private sector by the federal government and is later fed back to the province. The province only directly collects statistical information from the private sector on credit bureaus. The report will also look at the legislative and common law framework which affords protection to commercially sensitive information.

In addition, the Commercial Information Project's report will examine other jurisdictions, most notably the United States, Sweden and Australia, in an attempt to analyze different models of access which might be appropriate to the Ontario context. It seems that in the U.S., attempts have been made to use freedom of information legislation as a vehicle for industrial espionage. Given the benefit of the American experience, Ontario will have to look very closely at this problem if it is to enact freedom of information legislation.

Administrative Boards and Agencies Project

Principal Investigator: Lawrence M. Fox

Researchers: Marie C. Rounding Atkey, Greg Turnbull

The Administrative Boards and Agencies Project group has been concerned with a general examination of policies and practices of selected administrative decision-makers that deal with access to information. Study focused on two aspects of the issue: the question of access by the public generally, and the extent to which information is made available to a specific person whose rights are being decided upon by the board or agency.

Part of the research involved interviews with representatives of certain boards, including the Ontario Milk Marketing Board, the Ontario Highway Transport Board, the Ontario Energy Board and the Social Assistance Review Board.

The research group examined the existing degree of openness and identified the kinds of information that are treated in a confidential manner. For example, questions were asked respecting accessibility of files; whether in camera hearings are ever held; whether explanatory materials are available and whether reports or decisions are published. A major concern of the inquiry was the existence of "secret law"; whether decisions are being made in Ontario by persons using standards and criteria that are in essence law, but unpublished and unavailable.

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The final report of the Administrative Boards and Agencies Project will consider the interests which must be balanced if an effective freedom of information scheme is to be implemented in the context of the administrative process. These interests include administrative efficiency, the need for confidentiality of certain information and political accountability. The report will describe the current law respecting access to information. It will generally describe present practices of administrative decision-makers and will emphasize the kinds of information (e.g. personal, commercial, research) that are afforded special treatment. Secret law, particularly manuals used in making administrative decisions, will be discussed to show the impact of this unpublished body of government policy on individual rights. The paper will also attempt to identify possible problem areas for the administrative process if a freedom of information scheme is to be enacted in Ontario.

Personal Records/Privacy Project

Principal Investigator: Michael A. Brown

Researchers: Rebecca Shamai, Brenda Billingsley, Stan Kolankowski

The Personal Records/Privacy Project group has extremely broad terms of reference, ranging from the study of the impact of computerization on privacy to the implications of providing individual access to personal records, the use of mailing lists and the questions raised by unique personal identifiers (such as the S.I.N., Social Insurance Number). During the research, the group conducted in-depth interviews with people in the specific areas they were charged with examining: social services, education, health, corrections, law enforcement and government personnel records. In addition, the project group researched and studied published literature and legislation in other jurisdictions addressing problems of privacy protection. One of the main concerns was to understand the various approaches which have been taken in these jurisdictions and to assess their feasibility in the Ontario context. The researchers found that the success of these schemes seems to vary considerably.

Through the research, it became apparent that many Ontario ministries and agencies are becoming aware of the need to actively consider the matter of privacy and are working on internal policies to improve security and to give individuals rights of access. It would seem that government secrecy has probably been the best guarantee of confidentiality of personal information; indeed, government information practices are so confidential in nature that it is difficult for citizens to assess exactly what information is being collected and held on them. Obviously, if freedom of information legislation were to be enacted in Ontario, a clearer definition would need to be made of the boundary between the public's right to know and the individual's right to privacy.

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The researchers found how difficult it is to define what constitutes an invasion of privacy. The key problems however, might be dealt with by the introduction of "data protection" legislation which would regulate how information, once collected, would be used. Computers, paradoxically, may provide part of the means to privacy protection. Proper data protection legislation could attempt to ensure that those in charge of computers use them with care when dealing with information of a personal nature.

The research indicated that the people who probably suffer the greatest invasions of their privacy are those who seek some form of social assistance from the government; most notably, welfare recipients. Study also revealed that particular care and attention is needed with respect to the privacy rights of children with whom the government deals. It is hoped that the final report of the Personal Record/Privacy Project will provide appropriate information and guidance to the Commission for their consideration of these issues in the Ontario context.

Municipal Government Project

Principal Investigators: Stanley M. Makuch, John Jackson
Researchers: Joan Garson, Larry Silani

The Municipal Government Project has focused on the issue of freedom of information rather than privacy in order to avoid duplication of the work of other projects.

To ascertain the current practice with respect to access to information in the municipalities, the investigators conducted interviews with local politicians, local administrators, local citizen groups and individuals as well as the local media in a cross-section of eleven municipalities in different parts of the province. The research emphasizes not only the access of the public to information from their local government, but also the access of the politicians to information from the administrators. This was done by examining municipal councils, planning boards, school boards and police commissions. The interviews focused on the use of in camera meetings and the distribution of internal documents and reports. Research was also carried out on the role of the Ontario Municipal Board as a mechanism to ensure access to information.

This research has indicated a wide variation in the practice of open and closed meetings and in the distribution of reports and documents. Some local authorities deal with almost everything in public; others deal with personnel, real estate acquisition and litigation in private; while still others deal with virtually everything in camera, except for a public formalization process. There is a corresponding variation in practice with respect to the dissemination of written information.

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The research conducted thus far suggests that the practice in various municipalities depends on the political climate, the interest of the people, the aggressiveness of the local press and trust in the politicians. It may be that legislation could encourage openness in local government, but it would seem that only these factors can guarantee it.

A second important insight suggested by the research is that where openness is a characteristic of local government, it is so by practice rather than by formal legislative action. It may be desirable to encourage or require municipalities, within minimum standards set by the province, to adopt policies outlining and formally enacting their practice with respect to access to information.

OTHER HIGHLIGHTS OF THE COMMISSION'S ACTIVITIES

In mid-June, the Commission was honoured to receive a most distinguished guest from Australia, William Orme, Esq., Executive Director of the Privacy Committee of New South Wales, who discussed in detail the history, implementation and operation of the New South Wales Privacy Committee. Mr. Orme provided the Commission with a great number of specific examples of problems and the Privacy Committee's approach towards various solutions. Since research into this area had been carried out by the research team, it was extremely valuable to the Commission's research staff to have such an authority present.

Earlier in June, the Commission was privileged to welcome Ms. Inger Hansen, recently appointed Privacy Commissioner under the new Canadian Human Rights Act. Ms. Hansen discussed the provisions of the Act and her role in dealing with complaints under this piece of legislation, and provided the Commission's research staff with valuable insights into the duties and responsibilities of an ombudsman in the area of individual privacy.

RESEARCH PUBLICATIONS

During the fall season, 1978, a considerable number of the research reports and studies will be made available to the public. A complete publishing schedule is being prepared at present. It is anticipated that the first two papers will be available in the early fall:

Freedom of Information and Ministerial Responsibility
by Kenneth D. Kernaghan

The Freedom of Information Issue: A Political Analysis
by Donald V. Smiley

Copies of the research publications may be obtained as they become available from the Ontario Government Bookstore, or by mail order from the Publications Centre. These publications will also be on display at most libraries across the province, including the Commission's library.

WITH SPECIAL THANKS

Over the past few months, an important part of the Commission's research has entailed in-depth interviews and meetings with a great number of people within and outside the employ of the Ontario government: deputy ministers; directors, managers and administrators from various ministries of the province, encompassing a broad range of services; directors and members of boards, agencies and commissions; chairmen and members of boards of education; elected representatives at the municipal and provincial levels; people in business and industry; people working in federal ministries and agencies in Canada, the U.S. and abroad; members of the legal and medical professions; members of police forces and agencies; administrators and university faculty.

To everyone who gave their time and assistance, the Commission is most indebted. The courtesy, cooperation and knowledge of all concerned has fulfilled an essential role in the Commission's understanding of freedom of information and privacy issues.

AJ



Government
Publications

416/598-0411

180 Dufferin Street
22nd Floor
Toronto Ontario
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January, 1979

NEWSLETTER NO. 4

Commission
on
Freedom of Information
and
Individual Privacy

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Members
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Counsel
J. D. McCamus, L.L.M.
Director of Research
Hon. J. C. McRuer, O.C.
Consultant
Doris E. Wagg
Registrar

This Newsletter announces the publication of the Commission's first two research papers. These are:

The Freedom of Information Issue: A Political Analysis
Research Publication 1

by Donald V. Smiley, Professor of Political Science
York University, Toronto, Ontario

Freedom of Information and Ministerial Responsibility
Research Publication 2

by Kenneth Kernaghan, Professor of Politics and Administration
Brock University, St. Catharines, Ontario

Both papers are now on sale to the public at the Ontario Government Bookstore.

Mail orders should be sent to:
Publications Centre
880 Bay Street, 5th Floor
TORONTO, Ontario M5S 1Z8

It is the intention of the Commission to treat all subsequent research publications in the same way. These papers are being made available to encourage and stimulate public discussion and debate on freedom of information and individual privacy at a time when these matters are still under active review by the Commission. Interested members of the public are invited to comment in writing to the Commission on the contents of these papers.

The public initially became involved by participating in the series of public hearings, which have now been completed. A total of 114 submissions were received; 99 were presented at the hearings held by the Commission across Ontario. Seven submissions were not presented publicly. All of these submissions are now public documents and may be examined at the Commission's offices. The remaining submissions were in the form of private letters from Ontario citizens who raised specific personal grievances.

For its research purposes, the Commission took the position that before it could decide what information should be private, it had first to establish what information is now private. With respect to access to government-held information, what is currently available

to the public had to be determined before recommendations could be made as to what should be available. To accomplish this, the Commission and its research staff has had wide-ranging access to documentary material generated by the government of Ontario. Some of this material is confidential under existing law, some consists of Cabinet documents, some deals with police methods of investigation, welfare confidences, and so on. The Commission's research teams were also privileged to receive in confidence the frank comments and opinions of civil servants at all levels of government. The research findings are reflected in the various background working papers currently being made available by the Commission.

The following publications, currently in production, should be available by February, 1979 at the Government Bookstore or by mail through the Publications Centre:

Public Access to Government Documents: A Comparative Perspective
Research Publication 3
by Donald C. Rowat, Professor of Political Science
Carleton University, Ottawa, Ontario

Freedom of Information and the Workmen's Compensation Board
Research Publication 4
by Terence Ison, Professor of Law
Queen's University, Kingston, Ontario

Research and Statistical Uses of Ontario Government Personal Data
Research Publication 5
by David H. Flaherty, Professor of History
University of Western Ontario, London, Ontario

Access to Information: Ontario Government Administrative Operations
Research Publication 6
by Hugh R. Hanson et al

Announcements of further publications will be made in subsequent Newsletters.

By publishing its background working papers prior to the release of its final report, the Commission has further committed itself to its policy of openness. It should be emphasized that the views expressed in the research publications are those of the authors, and that they deal with questions which the Commission is in the process of resolving. This process involves the assessment by the Commission of all the material compiled since its inception in 1977, so that effective and suitable recommendations can be presented in the final report.

It is anticipated that the Commission's final report will be completed in the fall of 1979.

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Ontario

Government
Publications

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NEWSLETTER NO. 5

August, 1979

This fifth Newsletter published by the Commission on Freedom of Information and Individual Privacy serves two purposes.

First, the Commission wishes to notify all interested parties of the forthcoming conference:

OPEN GOVERNMENT AND THE FREEDOM OF INFORMATION ISSUE

September 27th and 28th, 1979
Osgoode Hall Law School

The conference is co-sponsored by the Commission and the Osgoode Hall Law School of York University, as part of the latter's annual lecture series. The list of speakers and commentators is impressive, and there will be ample opportunity to explore areas of concern in the discussions and workshop sessions. A tentative agenda, confirmed list of guest speakers and conference participants, plus advance registration form are to be found on pages 3-5.

The second purpose of the Newsletter is to bring to your attention the most recent of the Commission's research publications. The three studies listed below are briefly described overleaf.

Freedom of Information in Local Government in Ontario

Research Publication 7

by Prof. Stanley M. Makuch and Mr. John Jackson

Securities Regulation and Freedom of Information

Research Publication 8

by Prof. Mark Q. Connelly

Rule-Making Hearings: A General Statute for Ontario?

Research Publication 9

by Prof. David J. Mullan

These, and subsequent research reports may be obtained from the Ontario Government Bookstore, or by mail-order through the Publications Centre, 5th Floor, 880 Bay Street, Toronto, Ontario M7A 1N8. All publications cost \$2.00 each. Orders placed through the Publications Centre should be accompanied by a cheque or money order made payable to the "Treasurer of Ontario."

RECENT RELEASES

(Research Publication 7)

Freedom of Information in Local Government in Ontario: Professor Makuch, of the Faculty of Law at the University of Toronto, and Mr. Jackson, a Lecturer in political science at the University of Windsor, explore the need to provide and restrict freedom of information in local government in Ontario. They examine current practice on the basis of extensive interviews conducted in 11 municipalities, and recommend the adoption of a new legislative scheme which attempts to "combine minimum provincial standards of openness with local involvement in supplementing and providing detail for those standards." The authors recommend provisions establishing two basic rights, "the right to attend deliberations, and the right to obtain information," and suggest attendant qualifications on each.

(Research Publication 8)

Securities Regulation and Freedom of Information: This study by Professor Connelly, of the Osgoode Hall Law School at York University, describes and assesses the information practices of an Ontario regulatory agency, the Ontario Securities Commission, and compares its experience with that of an American counterpart, the Securities and Exchange Commission, which must conduct its activities within the provisions of the American Freedom of Information Act. Professor Connelly suggests, among other things, that the American legislation incorporates roughly the correct exemptions and provides "the only effective mechanism for promoting disclosure -- judicial review."

(Research Publication 9)

Rule-Making Hearings: A General Statute for Ontario?: Professor Mullan, of the Faculty of Law at Queen's University, considers the degree to which access should be given to policy material in the form of proposals for general policies or "rules" to be adopted by government and its agencies in the course of fulfilling their statutory responsibilities. Professor Mullan examines current Canadian and Ontario agency practice, and considers prior rejection of the hearing procedure for regulations. In the light of American legislative experience, Professor Mullan recommends in some detail the creation of "notice and comment" procedures in Ontario.

FOR FUTURE RELEASE

To date, the Commission has published 9 of a projected 17 research studies. In addition to a final bibliography, other papers will deal with policy-making, commercial information, and personal records and privacy. It is anticipated that the following two publications will be available within the next two months:

Freedom of Information and the Administrative Process

Research Publication 10

by Larry M. Fox

Government Secrecy, Individual Privacy and the Public's Right to Know: An Overview of the Ontario Law

Research Publication 11

by Timothy G. Brown

OSGOODE HALL LAW SCHOOL OF YORK UNIVERSITY
Annual Lecture Series - 1979
in cooperation with
THE ONTARIO COMMISSION ON FREEDOM OF INFORMATION
AND INDIVIDUAL PRIVACY

OPEN GOVERNMENT AND THE FREEDOM OF INFORMATION ISSUE
September 27th and 28th, 1979
Moot Court Room, Osgoode Hall Law School

The public is welcome to attend the various panel discussions, seminars and workshop sessions at no charge.

Official registrants, upon payment of a \$25.00 fee, will be entitled to attend the two luncheons and receptions scheduled. Registrants at the conference will also receive a copy of the published proceedings.

Note: Registration will be limited on a first-come-first-served basis. Those interested should complete the attached registration form and return it by September 14, 1979 to Ann Montgomery at Osgoode.

Tentative Conference Agenda
Thursday, September 27, 1979:

9:00 a.m. Registration

9:30 OPEN GOVERNMENT: RATIONALES AND GENERAL PERSPECTIVES

Speaker:

• Prof. Donald V. Smiley
Dept. Political Science
York University

Commentators:

- Prof. Christian Bay
Dept. Political Economy
University of Toronto
- Prof. James B. Rule
Dept. of Sociology
SUNY, Stony Brook

11:00	Coffee Break
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11:15 OPEN GOVERNMENT AND RULE-MAKING

Speaker :

Prof. David J. Mullan
Faculty of Law
Queen's University

Commentators:

- to be arranged

12:30 p.m. Luncheon

1:30 OPEN GOVERNMENT, THE WESTMINSTER MODEL AND POLICY FORMULATION

Speaker :

• Prof. Douglas Hartle
Institute for Policy Analysis
University of Toronto

Commentators:

- Prof. G. Bruce Doern
School of Public Administration
Carleton University
- Prof. Hudson Janisch
Faculty of Law
University of Toronto

3:30 Coffee Break

Thursday, September 27 (cont'd)

4:00 p.m. FREEDOM OF INFORMATION AND COMMERCIAL PRIVACY
Speaker: Commentators:
. Prof. Mark Q. Connelly . to be arranged
Osgoode Hall Law School
York University

5:30 Reception

Tentative Conference Agenda
Friday, September 28, 1979:

9:30 a.m. OPEN GOVERNMENT AND ADMINISTRATIVE ADJUDICATION
Speaker: Commentators:
. Prof. Terence G. Ison . to be arranged
Faculty of Law
Queen's University

10:45 Coffee Break

11:00 WORKSHOP SESSIONS

1. CANADIAN HUMAN RIGHTS CODE, PART IV

Speaker: Commentator:
. Inger Hansen, Privacy . Prof. David H. Flaherty
Commissioner, Canadian Dept. of History
Human Rights Commission University of Western Ontario

2. CANADIAN BAR ASSOCIATION MODEL FREEDOM OF INFORMATION ACT

Speaker: Commentator:
. Prof. Murray Rankin . to be arranged
Faculty of Law
University of Victoria

12:30 p.m. Luncheon

1:30 FREEDOM OF INFORMATION AND LOCAL GOVERNMENT
Speaker: Commentator:
. Prof. Stanley M. Makuch . Prof. Dennis Hefferon
Faculty of Law Osgoode Hall Law School
University of Toronto York University

3:00 Coffee Break

3:30 OPEN GOVERNMENT, NATIONAL SECURITY AND
THE MANAGEMENT OF INTELLIGENCE GATHERING
Speaker: Commentators:
. Morton Halperin . Prof. Richard French
Center for National Security Faculty of Management
Studies, Washington, D.C. McGill University
. Others to be arranged

5:30 Reception

ADVANCE REGISTRATION FORM

OPEN GOVERNMENT AND THE FREEDOM OF INFORMATION ISSUE

(to be submitted by September 14, 1979)

To: Ms. Ann Montgomery
Dean's Office
Osgoode Hall Law School
York University
4700 Keele Street
DOWNSVIEW, Ontario
M3J 2R5

Dear Ms. Montgomery:

I wish to register for the two-day conference on "Open Government and the Freedom of Information Issue," to be held September 27th and 28th, 1979 at Osgoode Hall Law School, York University, Toronto.

I have indicated below which method of payment I prefer with respect to the \$25.00 registration fee;

☐

I enclose a cheque/
money order made
payable to
York University

☐

I will pay at
the conference

Signed:

Date:

Name: _____

Address: _____

Phone: _____

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Chairman
Dorothy J. Burgoyne, B.A.
G. H. U. Bayly, M.Sc.F.
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Director of Research
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Doris E. Wagg
Registrar

Commission
on
Freedom of Information
and
Individual Privacy

416/598-0411

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22nd Floor
Toronto Ontario
M5G 1Z8

NEWSLETTER NO. 6

February, 1980

This Newsletter provides a brief account of research studies recently published by the Commission. In the fall of 1979, the following three papers were released:

Freedom of Information and the Administrative Process
Research Publication 10 (\$2.00)

by Larry M. Fox This report provides a description and analysis of information access practices, across a broad range of administrative bodies whose decision-making activities determine the rights of citizens in Ontario. It examines the impact of legal mechanisms currently in place which secure some access to information for parties affected by these decisions. In addition, the paper identifies some difficult aspects of current administrative practice, such as so-called "secret law," and attempts to determine whether a freedom of information scheme could provide a solution to them.

Government Secrecy, Individual Privacy and the Public's Right to Know: An Overview of the Ontario Law
Research Publication 11 (\$2.00)

by Timothy G. Brown This paper describes and assesses the framework of Ontario law relative to the Commission's mandate. It examines the inadequacies of legislative provisions providing for government secrecy and discusses methods adopted in other jurisdictions to reduce the impact of such laws. The paper also examines limited protections afforded under present Ontario law to personal privacy and the limited right of public access to government documents. Supplementary materials, including full extracts of Ontario statutory non-disclosure provisions, are provided in the Appendices.

Freedom of Information and Individual Privacy: A Selective Bibliography
Research Publication 12 (\$2.00)

by Laurel Murdoch and Jane Hillard,
with the assistance of Judith Smith This selective bibliography is an expanded version of the preliminary edition released early in 1978. It represents a collection of English and French language materials on freedom of information and individual privacy, arranged under broad subject categories: computers and privacy, eavesdropping, freedom of information, government and the media, government information, government publishing, government secrecy, ministerial responsibility, open meetings, privacy, privileges and immunities, and security classification. The materials listed are up-to-date as of September, 1978.

In early March, the following two research papers will be available:

Freedom of Information and the Policy-Making Process in Ontario
Research Publication 13 (\$2.00)

by John Eichmanis This study attempts to provide a foundation of factual material and analytical discussion on which to assess the potential impact a freedom of information scheme would have on the policy-making process within the Ontario government. It describes this process, its operation, and the major institutions and "actors" involved, including the Cabinet, the civil service, MPPs and public interest groups. The paper includes a report of five case studies undertaken to examine actual documents generated by policy-makers and to determine their availability to the public.

Information Access and Crown Corporations
Research Publication 14 (\$2.00)

by Prof. I.A. Litvak This paper surveys the information practices and policies of Ontario Crown corporations engaged in commercial activity and attempts to identify the problems associated with implementing a freedom of information policy which would be applicable to such bodies. More particularly, the author gives an account of the information practices of Ontario Hydro, the Urban Transportation Development Corporation, and the Ontario Northland Transportation Commission.

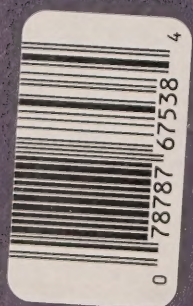
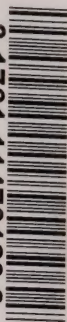
Commission research publications may only be obtained either at the Ontario Government Bookstore in Toronto, or by mail through the Publications Centre, 880 Bay Street, 5th Floor, Toronto, Ontario M7A 1N8. Orders placed through the Publications Centre should be accompanied by a cheque or money order made payable to the "Treasurer of Ontario."

FORTHCOMING COMMISSION PUBLICATIONS

We expect that the next Newsletter -- No. 7 -- will be the Commission's last communication with those on the mailing list. The Commission will wind down its operations following publication of its Final Report sometime in the spring of this year, the date to be confirmed in the next Newsletter.

Newsletter No. 7 will also provide more detail about the Commission's remaining three research studies. These papers, currently in production, should be available within a short period of time. The study by Susan Soloway concerns business information in Ontario government files; another by Heather Mitchell deals with the policy-making process in Sweden, the United States and Australia. In addition, a study over 600 pages in length by M. Brown, B. Billingsley and R. Shamai examines Privacy and Personal Data Protection in Ontario.

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